

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
February 8, 2023 Session

FILED
04/18/2023
Clerk of the
Appellate Courts

PAMELA PATTESON v. CHRISTOPHER PATTESON

**Appeal from the Circuit Court for Shelby County
No. CT-001963-17 Yolanda Kight Brown, Judge**

No. W2022-01187-COA-R3-CV

This is an appeal from a trial court’s order finding that Husband’s alimony to Wife constituted alimony *in solido* and that Husband was in breach of the parties’ marital dissolution agreement for failure to pay alimony to Wife in accordance with their agreement. Having reviewed the record before us, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed and Remanded**

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

Larry Rice and Chelsea Knox, Memphis, Tennessee, for the appellant, Christopher Patteson.

Mitchell Moskovitz and Kirkland Bible, Memphis, Tennessee, for the appellee, Pamela Patteson (Shumake).

MEMORANDUM OPINION¹

BACKGROUND AND PROCEDURAL HISTORY

Pamela Patteson (“Wife”) and Christopher Patteson (“Husband”) were married in

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

1992 and separated in 2017. The parties entered into a marital dissolution agreement (“MDA”), which provided that, “[b]eginning in June of 2019, Husband shall pay to Wife \$1,800 a month until the mortgage is paid in full. If Wife sells the house then the amount of alimony will be set at the payoff of the mortgage at the time of the sale and that payoff amount will be paid in continuing monthly payments of \$1800 a month until the payoff amount is paid in full.” The MDA further noted that, “Wife will have sole ownership of this residence and she will refinance the debt into her own name within 90 days of the date of the entry of the Final Decree.”² The parties’ “Final Decree of Absolute Divorce” was entered on August 4, 2017, and incorporated the MDA by reference.

On July 17, 2019, Wife filed a “Petition for Civil Contempt,” stating that Husband should be held in contempt because of his failure to pay Wife alimony as agreed upon in the MDA and incorporated into the final decree of divorce. On November 11, 2019, Wife filed an amended petition for contempt and alleged, in the alternative, a claim for breach of contract. In response, Husband maintained that, contrary to Wife’s assertions, the alimony provision of the parties’ MDA did not specify the type of alimony awarded and, therefore, the characteristics of the alimony must be analyzed. Husband argued that the alimony at issue should be classified as alimony *in futuro* rather than alimony *in solido*, because the total amount of the alimony award was not ascertainable at the time it was awarded. Specifically, Husband argued that because Wife was required to refinance the home within 90 days of the final decree, it would be “impossible” to know the amount of the alimony award or the duration of the alimony at the time of the entry of the final decree. Husband further maintained that not only should the alimony be classified as alimony *in futuro*, but he further argued that, because Wife had remarried, his alimony obligation was terminated and he was no longer required to make monthly payments to Wife.

On August 11, 2022, the trial court entered an order on Wife’s initial petition for civil contempt and her amended petition. Pursuant to this order, the trial court found that the alimony obligation constituted alimony *in solido* as it was both definite and ascertainable on August 4, 2017, the date of the entry of the final decree of divorce and was determinable by the payoff of the mortgage on the former marital home as of the same date. The trial court also found that the MDA was lawful and not ambiguous and that Husband had breached the parties’ MDA by failing to pay his alimony obligation to Wife beginning June 2019. Husband stipulated that, although he had the ability to pay Wife alimony, he intentionally chose not to do so based on the advice of counsel. Because Husband relied upon advice of counsel in not paying his alimony obligation, the trial court concluded that Husband’s conduct was not willful. The trial court found that Husband was not in compliance with the parties’ MDA and ordered Husband to pay the alimony arrearage in the amount of \$64,800.00 in addition to Wife’s reasonable attorney’s fees of \$34,419.00. This appeal followed.

² According to the record, Wife refinanced the residence on August 31, 2017, in accordance with the parties’ agreement.

ISSUES PRESENTED

Husband raises three issues on appeal, restated as follows:

1. Whether the trial court erred in characterizing Husband's alimony obligation as alimony *in solido* rather than alimony *in futuro*.
2. Whether the trial court erred in awarding Wife's attorney's fees and expenses.
3. Whether Husband is entitled to attorney's fees in the trial court and on appeal.

Wife raises an additional issue on appeal, restated as follows:

1. Whether Wife is entitled to attorney's fees and expenses on appeal.

STANDARD OF REVIEW

The facts of this case are undisputed. The central issue on appeal is whether the alimony set forth in the parties' MDA constitutes alimony *in solido* or alimony *in futuro*. This is a question of law, which this Court reviews de novo, with no presumption of correctness. *Averitte v. Averitte*, No. M2012-00738-COA-R3-CV, 2013 WL 357602, at *2 (Tenn. Ct. App. Jan. 29, 2013) (citing *Kelly v. Kelly*, No. M2008-02170-COA-R3-CV, 2009 WL 1312839, at *1 (Tenn. Ct. App. May 11, 2009); *Schmidt v. Schmidt*, No. M2004-01350-COA-R3-CV, 2005 WL 2240960, at *2 (Tenn. Ct. App. Sept. 15, 2005)).

DISCUSSION

Whether the Trial Court Erred in Characterizing Husband's Obligation as Alimony in Solido

Husband's primary argument on appeal concerns his contention that the alimony at issue in this case was erroneously classified as alimony *in solido* rather than alimony *in futuro*. "Current Tennessee law recognizes several distinct types of spousal support, including (1) alimony *in futuro*, (2) alimony *in solido*, (3) rehabilitative alimony, and (4) transitional alimony." *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 107 (Tenn. 2011) (citing Tenn. Code Ann. § 36-5-121(d)(1)). As alimony *in futuro* and alimony *in solido* are specifically at issue in the present case, our discussion will be limited as to these two classifications.

"The first type of spousal support, alimony *in futuro*, is intended to provide support on a long-term basis until the death or remarriage of the recipient." *Id.* (citing Tenn. Code Ann. § 36-5-121(f)(1)). "An award of alimony *in futuro* remains in the court's control for the duration of the award and may be modified upon a showing of substantial and material change in circumstances." *Id.* at 108 n.9 (citing Tenn. Code Ann. § 36-5-121(f)(2)(A)). "The second type of support, alimony *in solido*, is also a form of long-term support." *Id.* at

108. However, it is distinct from alimony *in futuro* due to the definiteness of the award. “The total amount of alimony *in solido* is set on the date of the divorce decree and is either paid in a lump sum payment of cash or property, or paid in installments for a definite term.” *Id.* (citing Tenn. Code Ann. § 36-5-121(h)). An award of “alimony *in solido* is considered a final judgment, ‘not modifiable, except by agreement of the parties,’ and does not terminate upon the death or remarriage of the recipient or payor spouse.” *Id.* (citing Tenn. Code Ann. § 36-5-121(h)(2)-(3)). The nature of the alimony award becomes relevant when one of the parties seeks to either modify or terminate the award. *Schmidt*, 2005 WL 2240960, at *3. “Discerning the nature of the award can [] be challenging if the language of the decree is not sufficiently descriptive,” as both alimony *in solido* and alimony *in futuro* “are typically comprised of court-ordered periodic payments.” *Id.* However, “[t]he mere fact that the obligation ‘is payable in installments is neither conclusive nor determinative regarding its status as *in solido* or *in futuro*.”” *Averitte*, 2013 WL 357602, at *2 (quoting *Isbell v. Isbell*, 816 S.W.2d 735, 738 (Tenn. 1991)). In ascertaining whether the alimony award at issue constitutes alimony *in solido* or alimony *in futuro*, the Supreme Court has previously explained:

Whether alimony is *in futuro* or *in solido* is determined by either the definiteness or indefiniteness of the sum of alimony ordered to be paid at the time of the award. Alimony *in solido* is an award of a definite sum of alimony. Alimony *in solido* may be paid in installments provided payments are ordered over a definite period of time and the sum of the alimony to be paid is ascertainable when awarded. Alimony *in futuro*, however, lacks sum-certainty due to contingencies affecting the total amount of alimony to be paid.

Waddey v. Waddey, 6 S.W.3d 230, 232 (Tenn. 1999) (emphasis added) (internal citations omitted). “If the alimony award contains contingencies that may affect the total amount to be paid, the award is for alimony *in futuro* because the total amount of alimony is not definite and ascertainable at the time the award is made.” *Kelly v. Kelly*, No. M2008-02170-COA-R3-CV, 2009 WL 1312839, at *2 (Tenn. Ct. App. May 11, 2009) (citing *McKee v. McKee*, 655 S.W.2d 164, 165–66 (Tenn. Ct. App. 1983)).

In this case, in analyzing whether the trial court erred in classifying the alimony as alimony *in solido*, we are guided by the language present in the parties’ MDA, which was incorporated into the final decree of divorce. The relevant portion of the parties’ MDA in this case provides as follows:

Beginning in June of 2019, Husband shall pay to Wife \$1,800 a month until the mortgage is paid in full. If Wife sells the house then the amount of alimony will be set at the payoff of the mortgage at the time of the sale and that payoff amount will be paid in continuing monthly payments of \$1800 a month until the payoff amount is paid in full.

We again note that the fact that Husband's obligation was to be paid in installments is not conclusive as to the alimony's status. Rather, the determinative factor hinges on whether the alimony was definite and ascertainable at the time of the award.

Upon reviewing the language contained in the parties' MDA, we conclude that Husband's alimony obligation was definite and ascertainable at the time of the award. The MDA did not provide for any contingencies upon which Husband's obligation would terminate, and it required him to pay Wife \$1,800.00 per month until the mortgage amount was paid in full. We find Husband's alimony obligation definite and ascertainable in this regard. The trial court has found that the total balance remaining for the mortgage on the date of the final decree of divorce was \$199,811.71.³ As such, Husband was required to make payments of \$1,800.00 per month to Wife until that balance was paid in full. See *Sommerville v. Sommerville*, No. 01A01-9502-CV-0007, 1995 WL 498943, at *1 (Tenn. Ct. App. Aug. 23, 1995) ("Tennessee law has long recognized that an award of monthly payments of alimony for a definite period, without any conditions or terminating factors, is an award of alimony *in solido*"). Moreover, although the MDA itself did not specify the total amount to be paid, the full amount of the remaining mortgage is easily ascertainable as indicated by the trial court's order. See *Bryan v. Leach*, 85 S.W.3d 136, 149–50 (Tenn. Ct. App. 2001) ("Although the total amount of the alimony [*in solido*] award is not stated in the agreement, simple arithmetic can determine how much Father agreed to pay when he entered the agreement.").

In his brief, Husband maintains that the MDA is silent as to the type of alimony agreed upon by the parties and thus, we must look to the characteristics of the alimony to make a determination as to the form. Specifically, Husband relies on a separate provision in the MDA to support his argument, which provides as follows, in pertinent part: "[T]he parties agree that Wife will have sole ownership of this residence and she will refinance the debt into her own name within 90 days of the date of the entry of the Final Decree." Relying upon this provision, Husband argues that, because Wife was required to refinance the property subsequent to the entry of the parties' final decree, the alimony payout would have increased by almost \$100,000.00. In support of his contention, Husband states that the sum of the alimony *in solido* award was not ascertainable at the time of the award because Wife was required to refinance the property, which constituted an "unknown contingency" affecting the total sum of the award. We disagree. As we noted earlier, the determination as to whether alimony constitutes *in solido* or *in futuro* "is determined by either the definiteness or indefiniteness of the sum of alimony ordered to be paid **at the time of the award.**" *Waddey*, 6 S.W.3d at 232 (citing *McKee*, 655 S.W.2d at 165). On the date of the entry of the final decree of divorce, there was a definite ascertainable amount of the existing mortgage, which the trial court ordered Husband to pay at the rate of

³ On February 10, 2023, this Court entered a non-dispositional order remanding the case to the trial court for additional findings of fact concerning the remaining balance of the mortgage on August 4, 2017. By order dated March 27, 2023, the trial court entered an order finding that balance to be \$199,811.71.

\$1,800.00 per month to Wife until paid in full. The fact that Wife was later required to refinance the home such that it will be in her name only is of no consequence. Again, the dispositive question is whether the amount was definite and ascertainable at the **time of the award**, which would have occurred on the date of the parties' final decree of divorce, incorporating the MDA. The mortgage payoff amount remaining at that time was definite and ascertainable. As such, we conclude that there was no error in the trial court's characterization of the alimony at issue as alimony *in solido*.

Moreover, in light of the fact that we are affirming the trial court's characterization of the alimony as alimony *in solido*, we further conclude that Husband is not entitled to reasonable attorney's fees and expenses incurred in the trial court or on appeal.

Whether Wife is Entitled to Additional Attorney's Fees at the Trial Court Level

In his brief, Husband maintains that the trial court erred in awarding Wife attorney's fees. Husband presupposes this argument on the basis of his contention that the trial court's order erroneously characterized the alimony as alimony *in solido*. However, as we have determined that there is no such error, we similarly determine that the trial court did not err in awarding Wife her attorney's fees and expenses at trial.

Whether Wife is Entitled to Attorney's Fees on Appeal

Wife's sole issue on appeal concerns whether she is entitled to attorney's fees on appeal. "An award of appellate attorney's fees is a matter within this Court's sound discretion." *Cooley v. Cooley*, 543 S.W.3d 674, 689 (Tenn. Ct. App. 2016) (quoting *Chaffin v. Ellis*, 211 S.W.3d 264, 294 (Tenn. Ct. App. 2006)). However, in determining whether an award of attorney's fees on appeal is appropriate, this Court will consider "the requesting party's ability to pay such fees, the requesting party's success on appeal, whether the requesting party sought the appeal in good faith, and any other equitable factors that need be considered." *Id.* (citing *Chaffin*, 211 S.W.3d at 294).

In her brief, Wife cites a provision in the parties' MDA, titled "Non-Compliance," which provides:

Should either party incur any expense or legal fees as a result of the breach of any portion of this Marital Dissolution Agreement by the other party, the Court shall award reasonable attorney's fees, costs, and suit expenses incurred in enforcing or defending this agreement to the non-defaulting party.

Based on this provision, Wife maintains that she is entitled to attorney's fees and expenses for defending this appeal. In light of our disposition contained herein, we conclude that Wife is entitled to her attorney's fees and expenses on appeal.

CONCLUSION

Based on the foregoing, we affirm the trial court's finding that the alimony at issue constitutes alimony *in solido*. We remand for enforcement of the trial court's order as well as for a determination of the amount of reasonable attorney's fees and expenses incurred by Wife on appeal and for any other purpose consistent with this Opinion.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE